

Daniel L. Wainwright, # 193486
McCormick, Barstow, Sheppard
Wayte & Carruth LLP
P.O. Box 28912
5 River Park Place East
Fresno, CA 93720-1501
Telephone: (559) 433-1300
Facsimile: (559) 433-2300

Attorneys for Defendant
JOHN J. HOLLENBACK, JR.

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FILED

MAY 08 2007

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

MELVIN JONES, JR.,

Plaintiff,

v.

JOHN J. HOLLENBACK, JR.,

Defendant.

Case No. CV-F-05-0148 OWW DLB

**FURTHER ORDER OF THE COURT
REGARDING THE DEFENDANT'S
MOTIONS IN LIMINE NOS. 5, 9 AND 21**

**Hearing Date: May 4, 2007
Time: 2:00 p.m.
Department: 3
Judge: Oliver W. Wanger**

Trial Date: May 8, 2007

On Friday, May 4, 2007, at 2:00 p.m. the parties came before this Court for further rulings on Plaintiff's "Offer of Proof" and further rulings on Defendant's Motions in Limine Nos. 5, 9 and 21. Counsel for defendant, Daniel L. Wainwright, was present in Court. Plaintiff, representing himself, appeared telephonically at the hearing.

The Court having reviewed and considered Plaintiff's "Offer of Proof" and Defendant's Motions in Limine Nos. 5, 9 and 21, all Opposition on file and all oral argument presented during the May 4, 2007 hearing hereby ORDERS, the following:

Plaintiff's "Offer of Proof"

As to Plaintiff's 5/2/07 "Offer of Proof," the Court hereby ORDERS as follows:

1 The Court ORDERS that Plaintiff will be permitted to testify as to the out of court declarations allegedly made by Defendant, to Plaintiff, on January 22, 2004 (after the hearing),

FURTHER ORDER OF THE COURT REGARDING THE DEFENDANT'S
MOTIONS IN LIMINE NOS. 5, 9 AND 21

1 and which are set forth in Plaintiff's 5/2/07 "Offer of Proof" at Exhibit #1. Such testimony will
2 be permitted as admissible hearsay as it goes to Defendant's alleged racial animus and is an
3 admission from a party defendant.

4 2. The Court ORDERS that Plaintiff shall not be permitted to testify as the out of
5 court statements purportedly made by a Caucasian male, to Plaintiff, on March 1, 2007 outside
6 Plaintiff's place of employment, and which is set forth in Plaintiff's 5/2/07 "Offer of Proof" at
7 Exhibit #2. Plaintiff is unable to establish any foundation that Defendant was aware of this
8 statement, adopted this statement or knew anything about the alleged conduct. Thus, it is
9 severely prejudicial, inherently unreliable and the prejudice to Defendant outweighs any
10 probative value.

11 **Further Rulings On Defendant's Motions in Limine**

12 As to Defendant's **Motion in Limine No. 5**, the Court hereby ORDERS as follows:

13 1. As to statements purportedly made by Leslie Jensen in October of 2002, Plaintiff
14 will be permitted to testify as to what Ms. Jensen said to him as set forth in his earlier filings.
15 However, the jury will be read a limiting instruction explaining that this statement is to be
16 considered only for the limited purpose of the declarant's (in this case Leslie Jensen) state of
17 mind and any possible animus or bias from the declarant towards Plaintiff. The jury is to be
18 advised that this statement is not to be considered to show any wrongdoing on the part of
19 Defendant ^{unless it is proved} that a conspiracy existed, that Defendant was aware of this statement and/or that
20 Defendant adopted or condoned what was said. It is only to be admitted and considered for the
21 very limited purpose described above ^{as to Mrs. Jensen}

22 2. As to statements purportedly made by Steven Carmichael in October of 2002,
23 these statements are irrelevant and there is no link or causal connection between Defendant and
24 these out-of-Court statements. Thus, such statements are excluded.

25 3. As to statements purportedly made by Judge Sovey-Silveira in April 2003 and
26 during other family law hearings, the Plaintiff will be able to testify as to what she told him
27 and/or what she stated to him. However, the jury will be read a limiting instruction as referenced
28 in No. 1, above and the statement will only be admitted for this limited purpose.

1 4. As to statements purportedly made by Judge Sovey-Silveira in October of 2002,
2 these statements are irrelevant and there is no link or causal connection between Defendant and
3 these out-of-Court statements. Thus, such statements are excluded.

4 5. As to statements purportedly made by Judge Sovey-Silveira in December 2002 and
5 during other family law hearings, the Plaintiff will be able to testify as to what she told him
6 and/or what she stated to him. However, the jury will be read a limiting instruction as referenced
7 in No. 1, above and the statement will only be admitted for this limited purpose.

8 6. As to statements purportedly made by Judge Sovey-Silveira in October of 2002,
9 these statements are irrelevant and there is no link or causal connection between Defendant and
10 these out-of-Court statements. Thus, such statements are excluded.

11 7. As to statements purportedly made by Don Strangio in April 2003 regarding
12 Martin Luther King these statements are irrelevant and there is no link or causal connection
13 between Defendant and these out-of-Court statements. Thus, such statements are excluded.

14 8. As to Plaintiff testifying regarding Don Strangio's trial testimony fee this is
15 irrelevant and inadmissible to the trial at hand. Thus, such testimony is excluded.

16 9. As to the October 3, 2003 conduct and statements made by Leslie Jensen, Plaintiff
17 will be permitted to testify as to what Ms. Jensen said to him as set forth in his earlier filings.
18 However, the jury will be read a limiting instruction as referenced in No. 1, above and the
19 statement will only be admitted for this limited purpose.

20 10. As to statements purportedly made by Leslie Jensen on or about February 8, 2004
21 during a court appearance Plaintiff will be permitted to testify as to what Ms. Jensen said to him
22 as set forth in his earlier filings. However, the jury will be read a limiting instruction as
23 referenced in No. 1, above and the statement will only be admitted for this limited purpose.

24 11. As to statements made by Leslie Jensen on March 15, 2004, which were done
25 apparently in the presence of Defendant, Plaintiff will be permitted to testify as to what he was
26 told by Leslie Jensen.

27 12. As to Michael Tozzi's alleged failure to appear at a March 15, 2004 hearing,
28 pursuant to a subpoena, the Court has determined that this testimony is irrelevant and thus

1 inadmissible. No such testimony or evidence regarding this will be permitted.

2 13. As to Judge Sovey-Silveira's purported conduct on April 15, 2004, Plaintiff is
3 entitled to question the Judge as to her actions (as previously ordered by the Court on April 27,
4 2007). However, Plaintiff is precluded from speculating as to what he believed or perceived with
5 respect to this conduct.

6 14. With respect to other beliefs, presumptions or perception that Plaintiff has asserted
7 with respect to the conduct in this case, such testimony is not permitted as it is speculative and
8 lacks foundation.

9 **As To Defendants Motion in Limine No. 9 the Court Hereby Orders As Follows:**


10 1. As set forth above, Plaintiff will be permitted to testify as to statements
11 purportedly made by Defendant on January 22, 2004 but, will not be able to testify as to out-of-
12 Court statements made by an unknown Caucasian male on March 21, 2007.

13 2. The Court has determined that Plaintiff, through his various Affidavits and Offers
14 of Proof has set forth *prima facie* evidence of the existence of a race-based conspiracy and
15 Defendant's involvement in such conspiracy. The Court is satisfied that Plaintiff has put forth
16 sufficient evidence, that if believed by the trier of fact could establish, by preponderance of the
17 evidence, the existence of a conspiracy and Defendant's involvement in said conspiracy.

18 **As To Defendants Motion in Limine No. 21, the Court Hereby Orders As Follows:**

19 1. The subject of this Motion in Limine has been addressed elsewhere in the Court's
20 respective Orders regarding Defendant's Motions in Limine and discussed more fully in the
21 Court's ruling on Motions in Limine numbers 5 and 9.

22 DATED: May 8, 2007

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25 The Honorable Oliver W. Wanger
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